

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CH₂O, INC.,

Plaintiff,

v.

MERAS ENGINEERING, INC.,

Defendant.

Case No. CV-13-8418 JAK (RZx)

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

STIPULATED PROTECTIVE ORDER
Case No. CV-13-8418 JAK (RZx)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5.1 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 2.5 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
7 as an expert witness or as a consultant in this action, (2) is not a past or current
8 employee of a Party or of a Party's competitor, and (3) at the time of retention, is
9 not anticipated to become an employee of a Party or of a Party's competitor.

10 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
11 Information or Items: extremely sensitive "Confidential Information or Items,"
12 disclosure of which to another Party or Non-Party would create a substantial risk of
13 serious harm that could not be avoided by less restrictive means.

14 2.8 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party
20 to this action but are retained to represent or advise a party to this action and have
21 appeared in this action on behalf of that party or are affiliated with a law firm which
22 has appeared on behalf of that party.

23 2.11 Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.

1 2.13 Professional Vendors: persons or entities that provide litigation support
 2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 4 and their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is
 6 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
 7 ATTORNEYS’ EYES ONLY.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 9 from a Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only
 12 Protected Material (as defined above), but also (1) any information copied or
 13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 14 compilations of Protected Material; and (3) any testimony, conversations, or
 15 presentations by Parties or their Counsel that might reveal Protected Material.
 16 However, the protections conferred by this Stipulation and Order do not cover the
 17 following information: (a) any information that is in the public domain at the time of
 18 disclosure to a Receiving Party or becomes part of the public domain after its
 19 disclosure to a Receiving Party as a result of publication not involving a violation of
 20 this Order, including becoming part of the public record through trial or otherwise;
 21 and (b) any information known to the Receiving Party prior to the disclosure or
 22 obtained by the Receiving Party after the disclosure from a source who obtained the
 23 information lawfully and under no obligation of confidentiality to the Designating
 24 Party. This Order does not govern the use of Protected Material at trial.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
 27 imposed by this Order shall remain in effect until a Designating Party agrees
 28

otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations.

Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that
6 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
8 protected material. If only a portion or portions of the material on a page qualifies
9 for protection, the Producing Party also must clearly identify the protected portion(s)
10 (e.g., by making appropriate markings in the margins) and must specify, for each
11 portion, the level of protection being asserted.

12 A Party or Non-Party that makes original documents or materials available for
13 inspection need not designate them for protection until after the inspecting Party has
14 indicated which material it would like copied and produced. During the inspection
15 and before the designation, all of the material made available for inspection shall be
16 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
17 inspecting Party has identified the documents it wants copied and produced, the
18 Producing Party must determine which documents, or portions thereof, qualify for
19 protection under this Order. Then, before producing the specified documents, the
20 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
22 contains Protected Material. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly identify the protected
24 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
25 for each portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings,
27 that the Designating Party identify on the record, before the close of the deposition,
28

1 hearing, or other proceeding, all protected testimony and specify the level of
2 protection being asserted. When it is impractical to identify separately each portion
3 of testimony that is entitled to protection and it appears that substantial portions of
4 the testimony may qualify for protection, the Designating Party may invoke on the
5 record (before the deposition, hearing, or other proceeding is concluded) a right to
6 have up to 21 days to identify the specific portions of the testimony as to which
7 protection is sought and to specify the level of protection being asserted. Only those
8 portions of the testimony that are appropriately designated for protection within the
9 21 days shall be covered by the provisions of this Stipulated Protective Order.
10 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
11 afterwards if that period is properly invoked, that the entire transcript shall be
12 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY.”

14 Parties shall give the other parties notice if they reasonably expect a
15 deposition, hearing or other proceeding to include Protected Material so that the
16 other parties can ensure that only authorized individuals who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
18 proceedings. The use of a document as an exhibit at a deposition shall not in any
19 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.”

21 Transcripts containing Protected Material shall have an obvious legend on the
22 title page that the transcript contains Protected Material, and the title page shall be
23 followed by a list of all pages (including line numbers as appropriate) that have been
24 designated as Protected Material and the level of protection being asserted by the
25 Designating Party. The Designating Party shall inform the court reporter of these
26 requirements. Any transcript that is prepared before the expiration of a 21-day
27 period for designation shall be treated during that period as if it had been designated
28

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 2 otherwise agreed. After the expiration of that period, the transcript shall be treated
 3 only as actually designated.

4 (c) for information produced in some form other than documentary and for
 5 any other tangible items, that the Producing Party affix in a prominent place on the
 6 exterior of the container or containers in which the information or item is stored the
 7 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 8 EYES ONLY.” If only a portion or portions of the information or item warrant
 9 protection, the Producing Party, to the extent practicable, shall identify the protected
 10 portion(s) and specify the level of protection being asserted.

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 12 failure to designate qualified information or items does not, standing alone, waive
 13 the Designating Party’s right to secure protection under this Order for such material.
 14 Upon timely correction of a designation, the Receiving Party must make reasonable
 15 efforts to assure that the material is treated in accordance with the provisions of this
 16 Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 19 designation of confidentiality at any time. Unless a prompt challenge to a
 20 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
 21 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 22 delay of the litigation, a Party does not waive its right to challenge a confidentiality
 23 designation by electing not to mount a challenge promptly after the original
 24 designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 26 resolution process by providing written notice of each designation it is challenging
 27 and describing the basis for each challenge. To avoid ambiguity as to whether a
 28

1 challenge has been made, the written notice must recite that the challenge to
2 confidentiality is being made in accordance with this specific paragraph of the
3 Protective Order. The parties shall attempt to resolve each challenge in good faith
4 and must begin the process by conferring directly (in voice to voice dialogue; other
5 forms of communication are not sufficient) within 14 days of the date of service of
6 notice. In conferring, the Challenging Party must explain the basis for its belief that
7 the confidentiality designation was not proper and must give the Designating Party
8 an opportunity to review the designated material, to reconsider the circumstances,
9 and, if no change in designation is offered, to explain the basis for the chosen
10 designation. A Challenging Party may proceed to the next stage of the challenge
11 process only if it has engaged in this meet and confer process first or establishes that
12 the Designating Party is unwilling to participate in the meet and confer process in a
13 timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
15 court intervention, the Designating Party shall file and serve a motion to retain
16 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
17 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
18 days of the parties agreeing that the meet and confer process will not resolve their
19 dispute, whichever is earlier. Each such motion must be accompanied by a
20 competent declaration affirming that the movant has complied with the meet and
21 confer requirements imposed in the preceding paragraph. Failure by the Designating
22 Party to make such a motion including the required declaration within 21 days (or
23 14 days, if applicable) shall automatically waive the confidentiality designation for
24 each challenged designation. In addition, the Challenging Party may file a motion
25 challenging a confidentiality designation at any time if there is good cause for doing
26 so, including a challenge to the designation of a deposition transcript or any portions
27 thereof. Any motion brought pursuant to this provision must be accompanied by a
28

1 competent declaration affirming that the movant has complied with the meet and
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 the confidentiality designation by failing to file a motion to retain confidentiality as
8 described above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Producing Party's designation until the
10 court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 case only for prosecuting, defending, or attempting to settle this litigation. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the litigation has been terminated, a
17 Receiving Party must comply with the provisions of section 15 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to
28

1 disclose the information for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
3 A;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and
6 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, and
12 Professional Vendors to whom disclosure is reasonably necessary for this litigation
13 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
14 A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the “Acknowledgment and Agreement to
17 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
18 by the court. Pages of transcribed deposition testimony or exhibits to depositions
19 that reveal Protected Material must be separately bound by the court reporter and
20 may not be disclosed to anyone except as permitted under this Stipulated Protective
21 Order.

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
26 writing by the Designating Party, a Receiving Party may disclose any information or
27 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
28

1 to:

2 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
3 employees of said Outside Counsel of Record to whom it is reasonably necessary to
4 disclose the information for this litigation and who have signed the
5 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
6 A;

7 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
8 necessary for this litigation, (2) who have signed the "Acknowledgment and
9 Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in
10 paragraph 7.4(a), below, have been followed;

11 (c) the court and its personnel;

12 (d) court reporters and their staff, professional jury or trial consultants, and
13 Professional Vendors to whom disclosure is reasonably necessary for this litigation
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
15 A); and

16 (e) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to
20 Experts.

21 (a) Unless otherwise ordered by the court or agreed to in writing by the
22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
23 Order) any information or item that has been designated "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c)
25 first must make a written request to the Designating Party that (1) identifies the
26 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 information that the Receiving Party seeks permission to disclose to the Expert, (2)

1 sets forth the full name of the Expert and the city and state of his or her primary
2 residence, (3) attaches a copy of the Expert's current resume, (4) identifies the
3 Expert's current employer(s), (5) identifies each person or entity from whom the
4 Expert has received compensation or funding for work in his or her areas of
5 expertise or to whom the expert has provided professional services, including in
6 connection with a litigation, at any time during the preceding five years,¹ and (6)
7 identifies (by name and number of the case, filing date, and location of court) any
8 litigation in connection with which the Expert has offered expert testimony,
9 including through a declaration, report, or testimony at a deposition or trial, during
10 the preceding five years.

11 (b) A Party that makes a request and provides the information specified in the
12 preceding respective paragraphs may disclose the subject Protected Material to the
13 identified Expert unless, within 14 days of delivering the request, the Party receives
14 a written objection from the Designating Party. Any such objection must set forth in
15 detail the grounds on which it is based.

16 (c) A Party that receives a timely written objection must meet and confer with
17 the Designating Party (through direct voice to voice dialogue) to try to resolve the
18 matter by agreement within seven days of the written objection. If no agreement is
19 reached, the Party seeking to make the disclosure to the Expert may file a motion as
20 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
21 applicable) seeking permission from the court to do so. Any such motion must
22 describe the circumstances with specificity, set forth in detail the reasons why the
23

24
25 ¹ If the Expert believes any of this information is subject to a confidentiality
26 obligation to a third-party, then the Expert should provide whatever information the
27 Expert believes can be disclosed without violating any confidentiality agreements,
28 and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY” before a determination by the court from which the subpoena or
 2 order issued, unless the Party has obtained the Designating Party’s permission. The
 3 Designating Party shall bear the burden and expense of seeking protection in that
 4 court of its confidential material – and nothing in these provisions should be
 5 construed as authorizing or encouraging a Receiving Party in this action to disobey a
 6 lawful directive from another court.

7 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced by a
 10 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
 12 Non-Parties in connection with this litigation is protected by the remedies and relief
 13 provided by this Order. Nothing in these provisions should be construed as
 14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
 16 produce a Non-Party’s confidential information in its possession, and the Party is
 17 subject to an agreement with the Non-Party not to produce the Non-Party’s
 18 confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-Party that
 20 some or all of the information requested is subject to a confidentiality agreement
 21 with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the Stipulated
 23 Protective Order in this litigation, the relevant discovery request(s), and a
 24 reasonably specific description of the information requested; and

25 3. make the information requested available for inspection by the Non-
 26 Party.

27 (c) If the Non-Party fails to object or seek a protective order from this
 28

1 court within 14 days of receiving the notice and accompanying information, the
 2 Receiving Party may produce the Non-Party's confidential information responsive
 3 to the discovery request. If the Non-Party timely seeks a protective order, the
 4 Receiving Party shall not produce any information in its possession or control that is
 5 subject to the confidentiality agreement with the Non-Party before a determination
 6 by the court. Absent a court order to the contrary, the Non-Party shall bear the
 7 burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has
 10 disclosed Protected Material to any person or in any circumstance not authorized
 11 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 12 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 13 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
 14 the person or persons to whom unauthorized disclosures were made of all the terms
 15 of this Order, and (d) request such person or persons to execute the

16 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
 17 A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 19 PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
 21 inadvertently produced material is subject to a claim of privilege or other protection,
 22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 24 may be established in an e-discovery order that provides for production without
 25 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
 26 as the parties reach an agreement on the effect of disclosure of a communication or
 27 information covered by the attorney-client privilege or work product protection, the
 28

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected
14 Material. A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5. Protected Material may only be filed under seal
16 pursuant to a court order authorizing the sealing of the specific Protected Material at
17 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
18 request establishing that the Protected Material at issue is privileged, protectable as
19 a trade secret, or otherwise entitled to protection under the law. If a Receiving
20 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
21 5 is denied by the court, then the Receiving Party may file the Protected Material in
22 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by
23 the court.

24 ///

25 ///

26 ///

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: February 13, 2015

FISH & RICHARDSON P.C.

By: /s/ Christopher S. Marchese

Christopher S. Marchese

marchese@fr.com

Attorneys for Plaintiff, CH₂O, INC.

[Signatures continued on next page]

1 Dated: February 13, 2015

STAINBROOK & STAINBROOK, LLP

2
3 By: /s/ Craig M. Stainbrook

Craig M. Stainbrook

4 craig@stainbrookllp.com

5 Attorneys for Defendant, Meras
6 Engineering, Inc.

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8
9 DATED: February 13, 2015



10 _____
JOHN A. KRONSTADT
11 United States District
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of CH2O, Inc. v. Meras Engineering, Inc., CV-13-8418. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Northern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, a copy of the foregoing **STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING PATENTS, HIGHLY SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS** was filed with the Court's CM/ECF system, which provides service to all counsel of record.

/s/ Christopher S. Marchese

Chris Marchese